

Applicants respectfully submit that the claims in Group I & II are all directed to methods or composition for treating gastroesophageal reflux disease that require biocompatible hydrophilic microparticles. Thus, this specific feature is present in all the claims. Therefore, even if the Applicants were to elect one of the groups, the required search would necessarily encompass the subject matter of the other groups.

As stated in § 803 of the *Manual of Patent Examining Procedures* ("MPEP") (August, 2001):

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions (emphasis added).

Thus, all of the subject matter in Groups I & II should be examined together. Moreover, even if the subject matter of these groups were distinct inventions, it would not be a "serious burden" on the Examiner to search these groups in this application. Applicants, therefore, respectfully request that the restriction of the claims be reconsidered and withdrawn.

On pages 3-4 of the Office Action, it is alleged that the pending claims are directed to more than one species of the generic invention: (I) coating with autologous cells and (II) coating with as least one collagen (or a derivative thereof) and Glucosaminoglycans (or a mixture thereof).

Before addressing the Examiner's requirement regarding election of species, Applicants respectfully submit that the Examiner's characterization of the claimed invention is incorrect. The Examiner seems to imply that microparticles or microspheres coated with autologous cells are mutually exclusive with those comprise one or more cell adhesion promoters. Applicants respectfully submit that this characterization of the claimed invention is incorrect. Nothing in any of the claims or the specification suggests that a microparticle that is coated with autologous cells could not, at the same time, comprise one or more cell adhesion promoters. In fact, it is entirely possible that a microparticle of the present invention comprises both autologous cells and one or more cell adhesion promoters. Therefore, Applicants submit that the Examiner's characterization of the invention is incorrect, since microparticles coated with autologous cells are not mutually exclusive with microparticles comprising one or more cell adhesion promoters.

As the Examiner is well aware, “[c]laims to be restricted to different species must be mutually exclusive.” *MPEP* § 806.04(f) (emphasis added). “The general test as to when claims are restricted, respectively, to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first.” *Id.* (emphasis added).

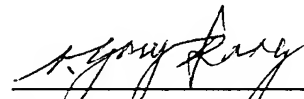
As discussed above, microparticles coated with autologous cells and microparticles comprising one or more cell adhesion promoters are in fact not mutually exclusive with each other. For this reason alone, the required election of species should be withdrawn. *Id.* Furthermore, the microparticles recited in claims 1-16 and 19-20, while maybe comprising different materials, such as autologous cells and/or cell adhesion promoters, all recite the features of biocompatible, hydrophilic, and suitable for treating gastroesophageal reflux disease. There is no suggestion that either microparticles coated with autologous cells or microparticles comprising one or more cell adhesion promoters do not require those features. Thus, a search to that effect would encompass both alleged species. Applicants therefore submit that the artificial and arbitrary restriction of the recited materials simply by their physical shape is inappropriate and should be withdrawn. *MPEP* §803.

In conclusion, Applicants respectfully submit that the restriction and election of species requirements set forth in the Office Action are inappropriate and should be withdrawn.

No fee is believed due for this response. Should any fees be required, please charge such fees to Pennie & Edmonds LLP Deposit Account No. 16-1150.

Respectfully submitted,

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